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February 10, 2006

FILED

FEB 14 2006

James A. Olson
CLERK, SUPREME COURT

Cynthia Turley
Deputy Clerk of Supreme Court
State of Missouri
Post Office Box 150
Jefferson City, MO 65102

RE: STOPAQUILA.ORG et al, Appellants, vs. City of Peculiar, Missouri,
Respondent
Missouri Supreme Court Case Number: SC87302

Dear Deputy Clerk of the Supreme Court:

By your letter dated February 1, 2006, you ask the parties to file letter briefs addressing the issue of how the final decision issued by the Missouri Court of Appeals in Case Number WD65985 (Cass County v. Aquila) affects the application for transfer pending in Supreme Court of Missouri Case Number SC87302, STOPAQUILA.ORG et al, Appellants, vs. City of Peculiar, Missouri, Respondent, WD65000. Specifically, the parties are directed to comment on whether the decision in WD65985 moots the application for transfer in whole or in part.

In WD65000, the Court of Appeals for the Western District held that the revenue bonds issued by the City of Peculiar were void. However, on information and belief, the undersigned states that the City of Peculiar and Aquila, Inc., continue to treat the bonds as being valid, obviously hoping that the Missouri Supreme Court will reverse the decision of the Missouri Court of Appeals rendered in WD65000.

In the decision issued in WD65000, it appeared that the agreement between Peculiar and Aquila contained provisions allowing the bonds to be cancelled or the deal to be unwound anytime until the end of 2005 (citing statements made by STOPAQUILA.ORG). On information and belief, the undersigned states that the City and Aquila have not cancelled the bonds and, in fact, all the payments that Aquila was to make to the City during 2005 have in fact been made by Aquila to the City. We are advised that \$700,000 was paid by Aquila to the City, and the City has retained all of this money.

Deputy Clerk of the Supreme Court
February 10, 2006
Page 2

On information and belief, the undersigned states that the City and Aquila have extended the agreement, so that the time to unwind the bond agreement will be some time in the future. The City and Aquila are proceeding on the assumption that the Supreme Court will somehow reverse the Court of Appeals decision, and the bonds which were issued by the City last year and given to Aquila will then be deemed to be valid.

The deadline for declaring an April election has passed, and the City has not placed this issue on the ballot. This means the City does not intend to put the matter to a vote of the electors. See RSMO 115.125 and 115.121.

After the Court of Appeals issued its decision in WD65985, the case in which the trial court issued an injunction to require that the power plant be torn down, Aquila decided not to seek a transfer to the Missouri Supreme Court but rather to seek further relief before the trial court.

Aquila is now seeking some kind of permission from the Missouri Public Service Commission and possibly a special use permit from Cass County in the hopes that the trial court will revise the injunction to allow the plant to remain. See February 9, 2006, editorial in the Kansas City Star, attached hereto.

It appears to be the hope of the City and Aquila that two things will happen: first, that somehow the trial court will allow the power plant to remain and, second, that somehow the decision that voided the bonds will also be reversed. Therefore, we continue to have a live controversy.

It is possible that this case may become moot after May 31, 2006. As the attached editorial indicates, the trial court issued a stay of its injunction until May 31, 2006. If at that time it appears that Aquila will not be able to get the permission that it believes it needs to keep the power plant from being torn down, then perhaps the City of Peculiar will cease in its efforts to finance this plant. However, even then it is not certain that this case is moot, because the City could attempt to finance the plant at another location.

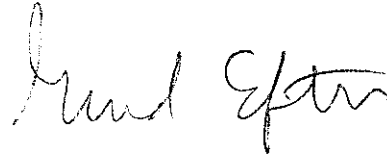
This case is not now moot. However, at some point in the future, it may become moot. If it is deemed moot, then the decision of the Court of Appeals should be affirmed. Under no circumstances should the Court of Appeals decision be overturned.

Wherefore, the undersigned on behalf of STOPAQUILA.ORG et al takes the position that this case is **not** moot.

Deputy Clerk of the Supreme Court
February 10, 2006
Page 3

Sincerely,

VAN HOOSER, OLSEN & EFTINK, P.C.

A handwritten signature in black ink, appearing to read "Gerard Eftink", written in a cursive style.

Gerard D. Eftink

GDE/ab

cc: John Dods
E. Sid Douglas, David W. Bushek
James Thompson
Eric Cunningham
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C. Todd Ahrens
Allen Garner
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William D. Geary
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AQUILA POWER PLANT

Utility's 'arrogance' creates costly mess

Aquila badly bungled construction of its \$140 million power plant in rural Cass County.

Now the utility is scrambling to try to get retroactive approval to operate the plant. Because the company essentially lacked appropriate approval from the Missouri Public Service Commission, a judge recently ordered Aquila to start tearing down the plant May 31.

Circuit Judge Joseph Dandurand said Aquila was guilty of "arrogance" and "disregard for the law."

So now the utility has asked the PSC to decide that the facility is badly needed to supply power to customers and must be kept in service.

PSC officials are gathering information on the request, with a decision expected in a few months. Even if the commission approves Aquila's application, however, the courtroom wrangling may continue.

ue.

Aquila caused this convoluted mess by maintaining that a 1938 state certificate allowed it to build whatever it needed to serve customers. The company never received zoning approval or a building permit for the plant. That greatly irritated Cass County officials and neighbors of the facility, which covers 37 acres. Legal fireworks followed.

The PSC eventually may approve continued operation of the plant. Even if that happens, Aquila would have plenty of fence-mending to do.

The state commission should make it clear to *all* utilities operating in Missouri that they should work with cities and counties before erecting future power plants.

And if the facility has to be torn down? Then Aquila — and its shareholders and ratepayers — will have learned a very expensive lesson.

To reach the Editorial Board, call (816) 234-4885.

THE KANSAS CITY STAR.

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A KNIGHT RIDDER NEWSPAPER

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THE KANSAS CITY STAR

LOSING IT WITH LISA | TODAY IN FYI

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Saturday, January 28, 2006

STUN BLITS ARE REPLACING SHACKLES

In court, security is literally shocking

By FORKLAND

Think you have a tough job? In a recent training session, St. Louis County's judges were reminded of the "tough" side of their work.

A \$800 entry fee, designed to keep court defendants in touch with the system, was the first of many challenges they face.

It was the first of many challenges they face. In the past year, judges could not have the court's security system, which is now being upgraded.

And, in the past year, judges could not have the court's security system, which is now being upgraded. The court's security system is now being upgraded.

JUDGE: POWER PLANT MUST GO

By DONALD BRIDGES
The Kansas City Star

A judge ordered Aquila to begin tearing down the plant, which is the largest power plant in the South. The plant is the largest power plant in the South.

At the same time, though, Circuit Judge Joseph Dandridge ordered the company to stay open. The plant is the largest power plant in the South.

What's next? An Aquila official said the company would stop operating the plant immediately. The company also will seek a court-ordered \$20 million bond.

Ronald McDonald House expands, creatively



FDA OKS INHALE FOR TAKING INSULIN

Treating diabetes just got easier

By ANDREW BRIDGES

PLANT: Judge orders Aquila teardown by May 31

Continued from A-1

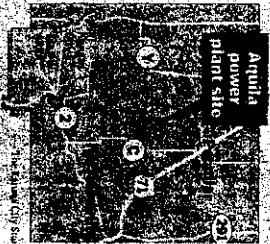
When it began building the plant, the utility contended that its Certificate of Public Convenience and Necessity, dating to 1938, exempted it from county regulation, even as it lost at both the circuit and appellate court levels.

The South Harper power plant covers 37 acres with transformers at the center, a control center, gas turbine generators and 70-volt, 60-hertz emission stacks. It lies within a quarter-mile of homes on 21st Street and Harper Road. Residents said the stacks speared pollutants and that turbines roared in the morning for hours.

After Friday's hearing, Norma Barry, a senior vice president for Aquila, said her company would stop operating the South Harper plant immediately and would post the bond.

County Court wants the utility to halt dismantling the plant immediately. Barry said the company should be held in contempt for not yet obeying an earlier order to take it down.

On Friday, Aquila was asking for more time, and its attorneys, at the time, said it was not ready to post bond.



The Aquila power plant site.

temporarily to repair the county's allegations that the company was a scofflaw driven by greed.

Right off the bat, however, Dan Dandurand said he was puzzled why Aquila was back in Cass County Circuit Court instead of pursuing its case with the Public Service Commission.

Dandurand, expressed frustration, too, at the Public Service Commission for what he called "shirking its responsibility. The commission, he said, had forced him to make rulings in the case because the commission did not want to.

Aquila attorneys said the plant was vital to customers and that it should not be forced to tear down the plant as long there was a chance that the Public Service Commission would grant the necessary approval.

"It's important that the plant still be standing when that decision comes," Aquila attorney Chris Reitz said. Reitz told Dandurand, Reitz said that tearing down the plant would be a waste, cost \$25 million and take up to 10 months.

"If I didn't take you that long to build it — why would it take that long to take it down?" Dandurand responded.

Cindy Reagans Martin, an attorney for Cass County, argued that the case was over and that Aquila had no legal basis for asking for a delay in dismantling the plant.

"You will not find another case in this state or in the country where somebody is asking for something like this," Reagans Martin told the court.

Granting Aquila's request for more time, she said, could create an environment in which anyone could come in to the county and build whatever they want whenever they want.

And I'm not persuaded by the fact that the county is asking for a delay in dismantling the plant.

On Wednesday, Aquila sought specific permission from the Public Service Commission to construct, install, own, operate, maintain and otherwise control and manage the plant.

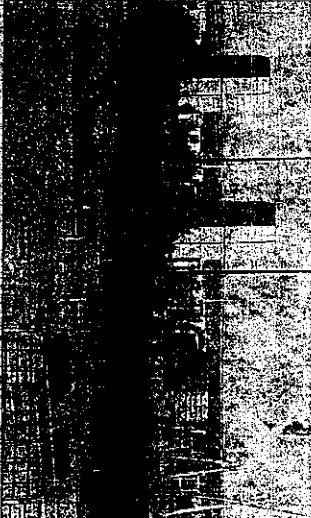
The commission has set a deadline of Feb. 27 to receive comments on the case. The commission then will decide what happens, but more court action is one possibility.

The Sept. 24th Missouri and Kansas cases, which were filed in 1997, were the first of their kind. All requests of "adding terrorist plotting employees," but an government permission, if that evidence was lacking.

American and Iraqi officials decline to discuss specific cases, including whether the women were solely because U.S. forces perceived that male relatives were terrorists. But Lt. Col. Barry J. Bagdad, said Friday that American military held only sons considered threats.

We recognize insurgents work alone. They work in groups. Questioning certainly focuses who they are associated with. Johnson said "If we believe have information or an association with terrorist activity, would make a determination about exactly what that role be."

In a memo written in June and released Friday, an official with the Defense Intelligence Agency, whose name was redacted, described the arrest of a 28-year-old woman from Far northwest of Baghdad. She had three young children, including one who was nursing.



The Aquila power plant site.

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REFUGEE: Ronald McDonald House expands in KC, creatively

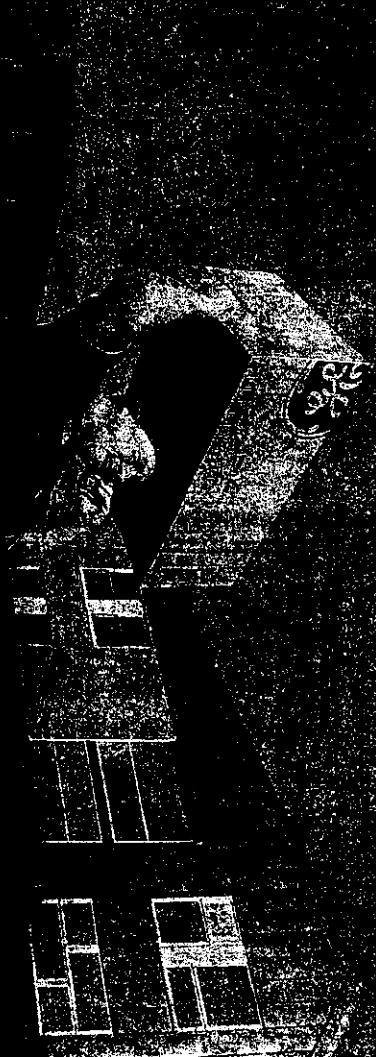
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Overall, addition to the 19 at the current house on Cherry Street.

In 2005, more than 3,600 families were referred to the house by hospitals, primarily Children's Mercy.

The new house will be one of the largest in the Ronald McDonald House network and will be one of the first built with "green" principles, such as geothermal heating and cooling.

The \$11 million project is expected to be completed by late 2007.



ARMY: Iraqi women detained

Continued from A-1

Women, about 14,000 detainees, were held in 76-year-old military. All accused of "adding terrorist plotting employees," but an government permission, if that evidence was lacking.

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U.S. forces raided her home, calling her husband a "primary target." Despite the soldiers had the house, the woman was at the house, the they would detain her, and leverage the information, the writer, the

Refugee, the

Refugee, the